

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5316 of 1983

Date of decision: 1-8-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DECEASED ARVIND SADASHIV                      SAVANT

Versus

CHHAGUBHAI BHAIJIBHAI DECD. BY HIS HEIR  
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Appearance:

Ms. D. T. Shah for Petitioners

Mr. N. K. . Majmudar for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/97

## ORAL JUDGEMENT

This petition is directed against the order of the Gujarat Revenue Tribunal dated 9th September, 1983 passed in Revision Application No.TEN.BA.1332/82 by which the revision application filed by the petitioner has been dismissed. During the pendency of this special civil application the petitioner died and his heirs and legal representatives have been brought on record and they are referred herein after as the petitioner.

2. The petitioner filed application under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 in respect of land comprising in Survey Nos. 20, 21 and 59 situated in village Rayan Talavadi, Taluka Vaghodia, District -Baroda, against the respondent who also died during the pendency of the special civil application, and now represented by his heirs and legal representatives hereinafter referred as 'the respondent'. That application came to be allowed by the Mamlatdar and Agricultural Lands Tribunal under its order dated 31st March, 1975. The petitioner preferred appeal against the said order before the Deputy Collector, Dabhoi, being Tenancy Appeal No.21/75, which came to be allowed under order dated 4th March, 1976. The order..R

order of the appellate authority reads as under:

"The appeal of the applicant dated 20-4-75 is being granted and the resolution T.K. No.70 B 23/74 dated 31-3-75 of the Mamlatdar and Krushi Panch, Vaghodia, is being set aside; and this matter is being remanded to the court of Mamlatdar and Krushi Panch, for hearing the parties afresh, for recording evidence, for taking the legal decision and for fresh enquiry. The stay order granted by this office vide Tenancy Dispute No.21/75 dated 2-9-75 is being vacated."

So the matter has been remanded back by the appellate authority to the Mamlatdar & A.L.T. for hearing afresh, for recording fresh evidence and for taking legal decision and for fresh enquiry. After remand, evidence both oral and documentary - have been produced by the parties. The application of the respondent came to be rejected by the Mamlatdar & A.L.T. The respondent filed appeal before the

Appellate Authority and the Appellate Authority under its order dated 31st August, 1981 allowed the appeal and ordered for enquiry to be held for determining the price of the land in dispute as required under section 32G of the Act. The Mamlatdar & A.L.T. was directed to take appropriate proceedings in this respect. Against the said order of the appellate authority the petitioner preferred revision application before the Revenue Tribunal, which came to be dismissed under the impugned order. Hence this special civil application.

3. The revision application was not filed within the period of limitation. Application for condonation of delay has been filed under section 5 of the Limitation Act. The application of the petitioner under section 5 of the Limitation Act was granted and the delay in filing the revision application was condoned.

4. The learned counsel for the petitioner contended that the Tribunal has committed serious error of jurisdiction in relying on the evidence of the respondent which has been recorded by the Mamlatdar & A.L.T. before remand of the matter by the appellate authority under its order dated 4th March, 1976. It has next been contended that when the matter was remanded back to record fresh evidence and to hold fresh enquiry whatever evidence which has been recorded by the lower authority prior to the remand could not have been relied upon. The learned counsel for the petitioner read out the relevant part of the judgment of the Tribunal from para 11 thereof. The learned counsel for the petitioner has raised manifold further contention on the merits of the matter.

5. The learned counsel for the respondent Shri N.K. Majmudar very fairly conceded that while giving decision the Tribunal has relied upon the evidence of the respondent which has been recorded earlier to the remand of the matter by the appellate authority under its order dated 4-3-1996. However, he submitted that otherwise also the petitioner's claim has no merits.

6. I do not consider it necessary to deal with all the contentions raised by the learned counsel for the parties in the matter as in my opinion the first contention raised by the learned counsel for the petitioner deserves acceptance and the matter needs to be remanded back to the Tribunal for fresh decision on the basis of the evidence which has been recorded by the original authority after remand. Whatever evidence which has been recorded by the original authority and the

decision given thereon has been reversed by the appellate authority, and the appellate authority has given direction for de novo enquiry in the proceedings initiated by the application under section 70(b) of the Act. So when fresh enquiry has to be held wherein fresh evidence has to be recorded then whatever evidence recorded earlier to the remand of the matter could not have been relied upon by the Tribunal. That evidence is nothing but only a scrap paper on the record. The matter would have been different if the appellate authority, while remanding the matter, reserved right to the parties to rely on the evidence recorded earlier. I am satisfied that that evidence was not ordered to be taken into consideration. The counsel for the respondent has also not controverted this position of fact and law.

7. The counsel for the petitioner submitted that if the matter is remanded, then issue of limitation in filing the revision application would be reopened. The Tribunal has condoned the delay in filing the revision application and that decision has not been challenged by the respondents, and also during the course of argument of this special civil application no objection is raised to that part of order of the Tribunal. I find justification in the contention of the learned counsel for the petitioner that the issue of limitation should not be reopened.

8. In the result this special civil application succeeds. The order of the Gujarat Revenue Tribunal dated 9-9-1983 passed in Revision Application No. TEN.BA.1332/82 is quashed and set aside, and the matter is remanded back to the Gujarat Revenue Tribunal to decide the revision of the petitioner afresh after excluding the evidence which has been produced on record after remand of the matter by the appellate authority to the Mamlatdar & A.L.T. for fresh enquiry. Both the parties will be at liberty to make submissions on merits on all counts except question of delay in filing of the revision application available to them, and the Tribunal shall consider the same and decide the matter as early as possible, but not later than four months from the date of receipt of certified copy of this order. Rule made absolute accordingly, with no order as to costs.

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